

IN THE MATTER OF

**THOMAS J. AND JULIE M.
HELEBA**

Petitioners

: BEFORE THE
:
: HOWARD COUNTY
:
: BOARD OF APPEALS
:
: HEARING EXAMINER
:
: BA Case No. 09-015V

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DECISION AND ORDER

On June 15, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Thomas J. and Julie M. Heleba for a variance to reduce the 30-foot rear setback to 21 feet for an addition to a single-family detached dwelling located in an R-20 (Residential: Single: Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Thomas Heleba and Julie Heleba testified in favor of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The 6,098-square foot, irregularly shaped property is located on the east side of Wheatfield Way to the north of Yorkshire Drive and is known as 8654 Wheatfield Way (the

"Property"). The Property lies in the 2nd Election District and is identified on Tax Map 30, Grid 6, as Parcel 404, Lot 244. It is part of the Long Gate Section 2, Area 2 subdivision.

2. The Property has about seventy-one feet of frontage, and the rear lot line is only sixty feet wide. The south lot line is 91 feet deep, and the north, 95 feet.

3. The Property is improved by 16,112-square foot, two-story, single-family frame dwelling situated just over the 30-foot front setback line. Attached to the rear northern half of the dwelling is a wood deck, next to which is a ground level brick patio. The Property is accessed by an asphalt driveway sited near the northern lot line. A deep drainage and utility and floodplain easement adjoins the rear property line.

4. Vicinal Properties. Adjacent properties are also zoned R-20 and are each improved with a single-family detached dwelling. According to Petitioner's Exhibit 1, a copy of the Long Gate Section 2, Area 2 subdivision plat, all but three of the lots in the subdivision are 100 to 110 feet deep.

5. The Petitioner is requesting a variance to reduce the 30-foot rear setback to about 21 feet for an approximately 9' by 33.3' rear addition. As a condition of approval, the Petitioners agreed to install a fence along the rear lot line that is similar in height and style to the wooden post fence depicted in the photograph of Lots 267 and 268 included with the petition

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique

physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance for the addition complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

1. In this case, there is no dispute that the lot's shallowness is a unique physical condition. All but three of the lots in the subdivision are 10 to 20 feet deeper. Consequently, I conclude the Property's shallowness is a unique physical condition causing the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The proposed addition will be used for a permitted purpose and is a reasonable size. I conclude the requested variance will not alter the essential character of the neighborhood in which the Property is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the Property's shape and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The addition is a reasonable size. Within the intent and purpose of the regulations, then, the deck variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 22nd Day of June 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Thomas J. and Julie M. Heleba Thomas for a variance to reduce the 30-foot building restriction line to 21 feet for an addition in an R-20 Zoning District is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the addition as described in the petition submitted and not to any activities, uses, structures, or additions on the Property.
2. The Petitioners shall install a fence along the rear lot line that is similar in height and style to the wooden post fence depicted in the photograph of Lots 267 and 268 included with the petition.
3. The Petitioners shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed:

6/23/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.